CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70845 of 2024

(Arising out of Order-in-Appeal No. 320-ST-ALLD-2024, dated -07/06/2024 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Pradeep Chandra **.....Appellant**
(181/118A, North Malaka
Prayagraj, Uttar Pradesh 211001)

VERSUS

Commissioner, CGST & Central Excise, Allahabad

....Respondent
(38, M.G Marg, Civil Lines, GST Bhawan,
Prayagraj, Uttar Pradesh 211001)

APPEARANCE:

Ms. Ayushi Jain, Chartered Accountant for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70522/2025

DATE OF HEARING : 29.07.2025
DATE OF DECISION : 29.07.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No. 320-ST-ALLD-2024, dated -07/06/2024 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad.

2. Learned Commissioner (Appeals) has dismissed the Appeal before him solely for the reason that the appeal was filed beyond the period prescribed under Section 85(3A) of the Finance Act, 1994.

3. Under section 85(3A) of the Finance Act, an appeal has to be presented within two months from the date of receipt of

the decision, but the Commissioner (Appeals), if he is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

4. In the present case, the Commissioner (Appeals) has noted the following facts with regard to the presentation of the appeal:

Sr. No.	Order-In-Original No. and date	Date of dispatch of OIO by the adjudicating authority	OIO received as claimed by the Appellant	Date on which appeal was required to be filed	Date of filing appeal
01	168/ST/DIV-II/ALLD/2022-23 dated 31.03.2023	12.04.2023	07.12.2023	07.02.2024	05.03.2024

5. The Commissioner (Appeals) noted that the Assistant Commissioner, on information sought from him, made the following comments:

> *"4.1.1 Since there was sufficient time gap in the dates of passing the impugned Order and of receiving the same, the Assistant Commissioner, CGST & Central Excise Division II, Allahabad was, therefore, requested to clarify regarding mode & date of service of the impugned Order, vide letter dated 03.04.2024. The Superintendent(Adj), CGST & Central Excise Division - II, Allahabad vide letter dated 10.05.2024 informed that the impugned Order was dispatched on 12.04.2023 vide speed post consignment number RU614254531IN and as per the available records no undelivered impugned order has been received in their office by the postal Department. However, on request of the Appellant made vide their letter dated 04.12.2023, the photocopy of office copy of the impugned order was again sent to the address provided by the Appellant on 06.12.2023."*

6. In the first instance, the order was not dispatched by registered post. The order was sent by speed post and under the amended section 37C, there should be proof of delivery also. In the present case, admittedly, there is no proof of delivery since what has been stated by the Assistant Commissioner in his comments is that the speed post that was sent to the Appellant did not return to the office.

7. In this view of the matter, Ms. Ayushi Jain, learned counsel appearing for the Appellant is justified in asserting that as the order was actually received by the Appellant on 07.12.2023 and the period of limitation would start to run from the said date.

8. In the present case, the Appellant has claimed that the order was received on 07.12.2023 when the Appellant contacted to the Department. The appeal was therefore filed within the condonable period from the date of receipt of the order.

9. The impugned order passed by the Commissioner (Appeals), therefore, deserves to be set aside and is set aside. The Commissioner (Appeals) shall now decide the appeal on merits.

10. In view of the above discussions, I find it appropriate to remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits without further visiting the aspect of limitation. Needless to mention that all issues are kept open and the Appellant is directed to cooperate in the remand proceedings and not to seek unnecessary adjournments. The appeal is allowed by way of remand to the learned Commissioner (Appeals).

(Dictated and pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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